

***Case No COMP/M.1952 -
RWE / IBERDROLA /
TARRAGONA POWER
JV***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 21/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **21/08/2000**
SG(2000)D/

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Madam/Sir,

Subject : Case No COMP/M.1952 – RWE/IBERDROLA/TARRAGONA POWER/JV
Notification of 14/07/2000 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 14 July 2000, the Commission received a notification of a proposed concentration by which RWE AG (“RWE”), Germany, and Iberdrola S.A. (“Iberdrola”), Spain, will establish a full-function joint venture Tarragona Power S.L. (“TPower”), Spain, active in the electricity supply at interconnected level mainly in Spain.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

¹ OJ No L 395 of 30.12.1989; Corrigendum: OJ No L 257 of 21.09.1990, p. 13.

I. THE PARTIES AND THE OPERATION

3. RWE is a German energy group active in production and supply of electricity, gas, heat and water. Furthermore, the company has business activities in the operation and other uses of energy and transport systems. Moreover, RWE is active in the telecommunication sector, trade in raw materials, semi-finished and finished products and consumables in the above-mentioned business areas. Most activities are carried out in Germany, with emerging operations being built-up in other Member States.
4. Iberdrola is mainly active in generation and supply of electricity in Spain. Moreover, the company is involved in divers industry sectors, such as new energy sources, engineering consultancy, telecommunications, information systems and real estate.
5. TPower will supply to third parties electricity at interconnected level, i.e. 380/220 kV level, generated from a gas-fired power plant, which will be in operation by 2003. In addition, TPower will supply third parties with small amounts of natural gas, steam and demineralized water. RWE and Iberdrola, who will hold each a 50% participation, will jointly control TPower.

II. THE CONCENTRATION

6. RWE and Iberdrola will jointly control TPower. Unanimously vote of the board of directors is required for strategic business decisions. The joint venture will be of full-function nature, as both parent companies will contribute sufficient resources, *inter alia*, staff, assets, financial resources, in order to allow from its parent companies independent operation of the new entity on the market.
7. The proposed operation, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (in 1999, RWE: EUR 38,4 billion, Iberdrola: EUR 6,3 billion). Each of RWE and Iberdrola have a Community-wide turnover in excess of EUR 250 million (RWE: EUR 31.630 million, Iberdrola: EUR 6.250 million) and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

IV. COMPETITIVE ASSESSMENT

9. TPower will supply electricity at interconnected level³ to large industrial customers. For this purpose, TPower will build a gas-fired power plant adding 400 MW of generation capacity to the Spanish market, which is approx. 1% of the currently installed capacity in total. In terms of consumption of electricity, the new power plant will generate approx. 3,2 TWh per year, which is approx. 1,7% of the currently consumed electricity in Spain. A part of the generated electricity will be earmarked for the supply of a chemical plant of BASF in Tarragona/Spain and the remainder will be supplied at interconnected level, a recently liberalised market on which the demand side comprises large industrial customers, with high consumption, that are allowed to choose freely their suppliers (eligible customers).
10. RWE has no activities in Spain. The structure of the Spanish electricity market is characterised by a high degree of concentration, the two leading companies Endesa and Iberdrola having together a market share of more than 80%. However, due to the negligible volume of electricity supplied by the joint venture the proposed operation would have no considerable impact on Iberdrola's market position.
11. The proposed operation would therefore not lead to the creation or strengthening of a dominant position on the market of electricity supply at interconnected level in Spain.
12. As far as Art. 2(4) of the Merger Regulation is concerned, there will be no risk of co-ordination between the parent companies as they are active on distinct geographic markets in the supply of electricity at interconnected level⁴. Moreover, the commercial significance of the investment in TPower in relation to the parent's activities can be considered of minor nature.

V. CONCLUSION

13. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

³ The Highest/High tension voltage network (380/220kV), see also the Commission's decision, M.1673 – VEBA/VIAG.

⁴ Due to the restricted capacity of the interconnectors at the Spanish borders, the supply of electricity at interconnected level can still be considered of national scope, see also the Commission's decision, M.1673 – VEBA/VIAG.